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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

RONNY-MARIE WILSON, Plaintiff, vs. FR SAN ANTONIO CENTER, LLC; WAL-MART STORES, INC., dba WALMART STORE #2280; SALLY BEAUTY SUPPLY LLC dba SALLY BEAUTY SUPPLY #2012; JO-ANN STORES, LLC dba JO-ANN FABRICS AND CRAFTS #710; Defendants.	No. **COMPLAINT ASSERTING DENIAL OF RIGHT OF ACCESS UNDER THE AMERICANS WITH DISABILITIES ACT FOR INJUNCTIVE RELIEF, DAMAGES, ATTORNEYS' FEES AND COSTS (ADA)**

I. SUMMARY

1. This is a civil rights action by plaintiff RONNY-MARIE WILSON ("Plaintiff") for discrimination at the building, structure, facility, complex, property, land, development, and/or surrounding business complex known as:

(a) Walmart Store #2280
600 Showers Drive
Mountain View, CA 94040
(hereinafter "the Walmart Facility")

(b) Sally Beauty Supply #2012
530 Showers Drive, Suite 6
Mountain View, CA 94040
(hereinafter "the Sally Facility")

(c) Jo-Ann Fabrics and Crafts #710
435 San Antonio Road
Mountain View, CA 94040
(hereinafter "the Jo-Ann Facility")

Each of the facilities identified above shall be collectively hereafter referred to as "the Facilities."

2. Plaintiff seeks damages, injunctive and declaratory relief, attorney fees and costs, pursuant to Title III of the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 et seq.) ("ADA") and related California statutes, against:

a) FR SAN ANTONIO CENTER, LLC (hereinafter "the Landlord Defendant");

b) WAL-MART STORES, INC., dba WALMART STORE #2280 (hereinafter "the Walmart Defendant");

c) SALLY BEAUTY SUPPLY LLC dba SALLY BEAUTY SUPPLY #2012 (hereinafter "the Sally Defendant"); and

d) JO-ANN STORES, LLC dba JO-ANN FABRICS AND CRAFTS #710 (hereinafter "the Jo-Ann Defendant").

The Walmart Defendant, the Sally Defendant, and the Jo-Ann Defendant are collectively referred to herein as "the Tenant Defendants," and together with the Landlord Defendant, collectively the "Defendants."

II. JURISDICTION

3. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1343 for ADA claims.

4. Supplemental jurisdiction for claims brought under parallel California law – arising from the same nucleus of operative facts – is predicated on 28 U.S.C. § 1367.

5. Plaintiff's claims are authorized by 28 U.S.C. §§ 2201 and 2202.

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III. VENUE

6. All actions complained of herein take place within the jurisdiction of the United States District Court, Northern District of California, and venue is invoked pursuant to 28 U.S.C. § 1391(b), (c).

IV. PARTIES

7. Plaintiff believes, and thereon alleges, that the Landlord Defendant owns, operates, and/or leases the real property consisting of the real property and common areas of the Facilities as well as the physical structures thereon (including the buildings in which each of the individual Tenant Defendants' Facilities is located), and consists of a person (or persons), firm, or corporation. Plaintiff further believes, and thereon alleges, that the Landlord Defendant leases the respective Facilities to the Tenant Defendants as follows:

a) The Walmart Defendant owns, operates, and/or leases the Walmart Facility, and leases the Walmart Facility from the Landlord Defendant;

b) The Sally Defendant owns, operates, and/or leases the Sally Facility, and leases the Sally Facility from the Landlord Defendant; and

c) The Jo-Ann Defendant owns, operates, and/or leases the Jo-Ann Facility, and leases the Jo-Ann Facility from the Landlord Defendant.

8. Plaintiff is substantially limited in her ability to walk, must use a wheelchair for mobility, and has substantially limited finger dexterity. Consequently, Plaintiff is "physically disabled," as defined by all applicable California and United States laws, and a member of the public whose rights are protected by these laws.

V. FACTS

9. The Facilities are open to the public, intended for non-residential use, and its operation affects commerce. The Facilities are therefore public accommodations as defined by applicable state and federal laws.

10. Plaintiff lives near the Facilities and visited the Facilities on the dates set forth below for the purpose of shopping. During her visits to the Facilities, Plaintiff encountered the following barriers (both physical and intangible) that interfered with, if not outright denied,

Plaintiff's ability to use and enjoy the goods, services, privileges and accommodations offered at the Facilities:

a) During Plaintiff's visits to the Walmart Facility on or about May 31, 2015, as well as on other occasions during the two years preceding the filing of this action (which dates Plaintiff cannot presently recall), she encountered the following barriers:

1) Plaintiff parked in a designated accessible parking stall to the east of the Walmart Facility entrance. The parking stall was excessively sloped, which made it difficult for her to transfer between her vehicle and her wheelchair.

2) Because the Walmart Facility's shopping carts have a locking mechanism that prevents them from traveling past a yellow line which is located on the walkway between the designated accessible parking and the Walmart Facility entrance, Plaintiff has observed that customers often leave their locked shopping carts on the walkway and the carts are not promptly removed by Walmart Facility staff. During Plaintiff's May 31, 2015 visit, she found that there were many shopping carts obstructing the walkway, and it was difficult for her to navigate her wheelchair between the carts when arriving at and leaving the Walmart Facility.

3) The door to the designated accessible toilet stall in the women's restroom at the Walmart Facility opened outward, and the approach to it was obstructed by the baby changing area, where baby strollers were left unattended by women who were in stalls with their children. It was difficult for Plaintiff to open the stall door and maneuver her wheelchair inside due to the lack of maneuvering clearances.

4) The coat hook within the designated accessible stall in the women's restroom at the Walmart Facility was positioned too high, and Plaintiff could not reach it to hang up her purse while she used the toilet.

5) The women's restroom door at the Walmart Facility was improperly configured and/or required excessive operating pressure, which made it difficult for Plaintiff to open the door when exiting the restroom.

b) During Plaintiff's visits to the Sally Facility and the Jo-Ann's Facility on or about October 31, 2015, she encountered the following barriers:

1) Plaintiff could not find a designated van-accessible parking stall near the Sally Facility and instead parked in the standard designated accessible parking stall at the end of the row of stalls in front of the Sally Facility entrance. The access aisle next to Plaintiff's parking stall contained a built-up curb ramp, which created an excessive slope that made it hard for her to transfer between her vehicle and her wheelchair within the access aisle.

2) The Sally Facility entry door was heavy, and Plaintiff was unable to open it herself. She needed someone else to hold the door open for her as she maneuvered her wheelchair over the raised threshold and into the store.

3) Some of the aisles inside the Sally Facility lacked proper wheelchair clearances, and it was difficult for Plaintiff to navigate around. It was particularly hard for her to turn around the ends of the aisles due to the lack of clearances.

4) The transaction counter at the Sally Facility was obstructed by items in front of the counter, including a tall display case, which another shopper had to move out of the way so that Plaintiff

could approach the counter to pay for her purchase.

5) After leaving the Sally Facility, Plaintiff wheeled herself to the Jo-Ann Facility. She could not find an accessible route of travel, and went down a walkway between the Kohl's store and 24 Hour Fitness, but found that the route continuing on to the Jo-Ann Facility contained a curb with no ramp. She had to wheel off the sidewalk and travel through the path of vehicular traffic to the corner, where she found a ramp that she was able to use to access the walkway leading to the Jo-Ann Facility. On her way back to her car which was still parked at the Sally Facility, she had to travel through the vehicular driveway, which contained uneven surfaces, and she was very worried about being hit by a car.

6) The entry door at the Jo-Ann Facility was heavy, and Plaintiff struggled to open it.

7) Several of the aisles inside the Jo-Ann Facility were obstructed by boxes, carts, and other items, which reduced the clear width of the route of travel such that Plaintiff's wheelchair did not fit and she was unable to go down those aisles.

11. The barriers identified in paragraph 10 herein are only those that Plaintiff personally encountered. Plaintiff is presently unaware of other barriers which may in fact exist at the Facilities and relate to her disabilities. Plaintiff will seek to amend this Complaint once such additional barriers are identified as it is Plaintiff's intention to have all barriers which exist at the Facilities and relate to her disabilities removed to afford her full and equal access.

12. Plaintiff was, and continues to be, deterred from visiting the Facilities because Plaintiff knows that the Facilities' goods, services, facilities, privileges, advantages, and accommodations were and are unavailable to Plaintiff due to Plaintiff's physical disabilities. Plaintiff enjoys the goods and services offered at the Facilities, and will return to the Facilities once the barriers are removed.

13. Defendants knew, or should have known, that these elements and areas of the Facilities were inaccessible, violate state and federal law, and interfere with (or deny) access to the physically disabled. Moreover, Defendants have the financial resources to remove these barriers from the Facilities (without much difficulty or expense), and make the Facilities accessible to the physically disabled. To date, however, Defendants refuse to either remove those barriers or seek an unreasonable hardship exemption to excuse non-compliance.

14. At all relevant times, Defendants have possessed and enjoyed sufficient control and authority to modify the Facilities to remove impediments to wheelchair access and to comply with the 1991 ADA Accessibility Guidelines and/or the 2010 ADA Standards for Accessible Design. Defendants have not removed such impediments and have not modified the Facilities to conform to accessibility standards. Defendants have intentionally maintained the Facilities in their current condition and have intentionally refrained from altering the Facilities so that they comply with the accessibility standards.

15. Plaintiff further alleges that the (continued) presence of barriers at the Facilities is so obvious as to establish Defendants' discriminatory intent. On information and belief, Plaintiff avers that evidence of this discriminatory intent includes Defendants' refusal to adhere to relevant building standards; disregard for the building plans and permits issued for the Facilities; conscientious decision to maintain the architectural layout (as it currently exists) at the Facilities; decision not to remove barriers from the Facilities; and allowance that Defendants' property continues to exist in its non-compliant state. Plaintiff further alleges, on information and belief, that the Facilities are not in the midst of a remodel, and that the barriers present at the Facilities are not isolated or temporary interruptions in access due to maintenance or repairs.

VI. FIRST CLAIM

Americans with Disabilities Act of 1990

Denial of "Full and Equal" Enjoyment and Use

16. Plaintiff re-pleads and incorporates by reference the allegations contained in each of the foregoing paragraphs, and incorporates them herein as if separately re-pled.

17. Title III of the ADA holds as a "general rule" that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment (or use) of goods, services, facilities, privileges, and accommodations offered by any person who owns, operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).

18. Defendants discriminated against Plaintiff by denying Plaintiff "full and equal enjoyment" and use of the goods, services, facilities, privileges and accommodations of the Facilities during each visit and each incident of deterrence.

Failure to Remove Architectural Barriers in an Existing Facility

19. The ADA specifically prohibits failing to remove architectural barriers, which are structural in nature, in existing facilities where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv).

20. When an entity can demonstrate that removal of a barrier is not readily achievable, a failure to make goods, services, facilities, or accommodations available through alternative methods is also specifically prohibited if these methods are readily achievable. Id. § 12182(b)(2)(A)(v).

21. Here, Plaintiff alleges that Defendants can easily remove the architectural barriers at the Facilities without much difficulty or expense, and that Defendants violated the ADA by failing to remove those barriers, when it was readily achievable to do so.

22. In the alternative, if it was not "readily achievable" for Defendants to remove the Facilities' barriers, then Defendants violated the ADA by failing to make the required services available through alternative methods, which are readily achievable.

Failure to Design and Construct an Accessible Facility

23. Plaintiff alleges on information and belief that the Facilities were designed and constructed (or both) after January 26, 1993 – independently triggering access requirements under Title III of the ADA.

24. The ADA also prohibits designing and constructing facilities for first occupancy after January 26, 1993, that aren't readily accessible to, and usable by, individuals with disabilities when it was structurally practicable to do so. 42 U.S.C. § 12183(a)(1).

25. Here, Defendants violated the ADA by designing and constructing (or both) the Facilities in a manner that was not readily accessible to the physically disabled public – including Plaintiff – when it was structurally practical to do so.[1]

Failure to Make an Altered Facility Accessible

26. Plaintiff alleges on information and belief that the Facilities were modified after January 26, 1993, independently triggering access requirements under the ADA.

27. The ADA also requires that facilities altered in a manner that affects (or could affect) its usability must be made readily accessible to individuals with disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering an area that contains a facility's primary function also requires making the paths of travel, bathrooms, telephones, and drinking fountains serving that area accessible to the maximum extent feasible. Id.

28. Here, Defendants altered the Facilities in a manner that violated the ADA and was not readily accessible to the physically disabled public – including Plaintiff – to the maximum extent feasible.

Failure to Modify Existing Policies and Procedures

29. The ADA also requires reasonable modifications in policies, practices, or procedures, when necessary to afford such goods, services, facilities, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter their nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

30. Here, Defendants violated the ADA by failing to make reasonable modifications in policies, practices, or procedures at the Facilities, when these modifications were necessary to afford (and would not fundamentally alter the nature of) these goods, services, facilities, or accommodations.

Failure to Maintain Accessible Features

31. Defendants additionally violated the ADA by failing to maintain in operable working condition those features of the Facilities that are required to be readily accessible to and usable by persons with disabilities.

[1] Nothing within this Complaint should be construed as an allegation that Plaintiff is bringing this action as a private attorney general under either state or federal statutes.

32. Such failure by Defendants to maintain the Facilities in an accessible condition was not an isolated or temporary interruption in service or access due to maintenance or repairs.

33. Plaintiff seeks all relief available under the ADA (i.e., injunctive relief, attorney fees, costs, legal expense) for these aforementioned violations. 42 U.S.C. § 12205.

VII. SECOND CLAIM

Unruh Act

34. Plaintiff re-pleads and incorporates by reference the allegations contained in each of the foregoing paragraphs, and incorporates them herein as if separately re-pled.

35. California Civil Code § 51 states, in part, that: All persons within the jurisdiction of this state are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

36. California Civil Code § 51.5 also states, in part that: No business establishment of any kind whatsoever shall discriminate against any person in this state because of the disability of the person.

37. California Civil Code § 51(f) specifically incorporates (by reference) an individual's rights under the ADA into the Unruh Act.

38. Defendants' aforementioned acts and omissions denied the physically disabled public – including Plaintiff – full and equal accommodations, advantages, facilities, privileges and services in a business establishment (because of their physical disability).

39. These acts and omissions (including the ones that violate the ADA) denied, aided or incited a denial, or discriminated against Plaintiff by violating the Unruh Act.

40. Plaintiff was damaged by Defendants' wrongful conduct, and seeks statutory minimum damages of $4,000 for each offense.

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41. Plaintiff also seeks to enjoin Defendants from violating the Unruh Act (and ADA), and recover reasonable attorneys' fees and costs incurred under California Civil Code § 52(a).

VIII. THIRD CLAIM

Denial of Full and Equal Access to Public Facilities

42. Plaintiff re-pleads and incorporates by reference the allegations contained in each of the foregoing paragraphs, and incorporates them herein as if separately re-pled.

43. Health and Safety Code § 19955(a) states, in part, that: California public accommodations or facilities (built with private funds) shall adhere to the provisions of Government Code § 4450.

44. Health and Safety Code § 19959 states, in part, that: Every existing (non-exempt) public accommodation constructed prior to July 1, 1970, which is altered or structurally repaired, is required to comply with this chapter.

45. Plaintiff alleges the Facilities are public accommodations constructed, altered, or repaired in a manner that violates Part 5.5 of the Health and Safety Code or Government Code § 4450 (or both), and that the Facilities were not exempt under Health and Safety Code § 19956.

46. Defendants' non-compliance with these requirements at the Facilities aggrieved (or potentially aggrieved) Plaintiff and other persons with physical disabilities. Accordingly, Plaintiff seeks injunctive relief and attorney fees pursuant to Health and Safety Code § 19953.

IX. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays judgment against Defendants, and each of them, for:

1. Injunctive relief, preventive relief, or any other relief the Court deems proper.
2. Statutory minimum damages under section 52(a) of the California Civil Code according to proof.
3. Attorneys' fees, litigation expenses, and costs of suit.[2]
4. Interest at the legal rate from the date of the filing of this action.

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[2] This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

5. For such other and further relief as the Court deems proper.

Dated: January 25, 2016

MOORE LAW FIRM, P.C.

/s/ Tanya E. Moore

Tanya E. Moore
Attorney for Plaintiff
Ronny-marie Wilson

VERIFICATION

I, RONNY-MARIE WILSON, am the plaintiff in the above-entitled action. I have read the foregoing Complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe them to be true.

I verify under penalty of perjury that the foregoing is true and correct.

Dated: January 25, 2016

/s/ Ronny-marie Wilson
Ronny-marie Wilson

I attest that the original signature of the person whose electronic signature is shown above is maintained by me, and that his concurrence in the filing of this document and attribution of his signature was obtained.

/s/ Tanya E. Moore
Tanya E. Moore, Attorney for
Plaintiff, Ronny-marie Wilson